2020

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued December 2020

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2020 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 3

Title 11 (Chapters 7 to 25)

(As Revised 2019)

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By the Editorial Staff of the Publisher

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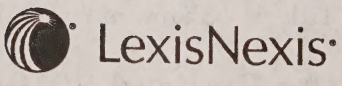
ISBN 978-0-327-09628-3 (Code set)
ISBN 978-1-5221-7812-5 (Volume 3)



Matthew Bender & Company, Inc.

555 Middle Creek Parkway, Colorado Springs, CO 80921

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(Pub. 44510)

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

There are no new sections added in this supplement.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME THREE

TITLE 11.
CIVIL PRACTICE AND PROCEDURE

Chapter 21. Partition of Property. 11-21-1

CHAPTER 1.
PRACTICE AND PROCEDURE PROVISIONS COMMON TO COURTS

§ 11-1-52. Limitations on charges permitted for photocopying patients' records by medical provider; physicians to make reasonable charges for depositions; limitations on charges permitted for execution of patient-requested medical record affidavit by medical provider; medical providers to comply with HIPAA.

JUDICIAL DECISIONS

ANALYSIS

2. Overcharge.
3. Compliance.
4. Execution of medical records affidavit.

2. Overcharge.

Because a company failed to show that its fee was reasonable and cost based as required by the Health Insurance Portability and Accountability Act, the trial court did not err by finding that it had overcharged a patient and by ordering it to provide her a refund for the cost of reproducing her medical records; the company did not show that the fee schedule in the statute bore any relationship to actual costs. NewSouth Neurospine, LLC v. Hamilton, 283 So. 3d 1092, 2019 Miss. LEXIS 400 (Miss. 2019).

3. Compliance.

Fees charged by medical facilities for reproduction of medical records must comply both with 11-1-52(1) and the Health Insurance Portability and Accountability Act. NewSouth Neurospine, LLC v. Hamilton, 283 So. 3d 1092, 2019 Miss. LEXIS 400 (Miss. 2019).

Simply referencing a state fee schedule is insufficient to comply with the Health Insurance Portability and Accountability Act's mandate of a reasonable, cost-based fees because a state fee schedule bears no relationship to an entity's actual costs in a specific case; a state fee schedule is not a calculation of actual costs, nor does it embody a given medical provider's calculation of average costs for fulfilling standard requests. NewSouth Neurospine, LLC v. Hamilton, 283 So. 3d 1092, 2019 Miss. LEXIS 400 (Miss. 2019).

4. Execution of medical records affidavit.

Trial court erred by ordering a company to refund a patient for the cost of executing a medical records affidavit because the company was entitled to charge for executing a medical records affidavit. NewSouth Neurospine, LLC v. Hamilton, 283 So. 3d 1092, 2019 Miss. LEXIS 400 (Miss. 2019).

Execution of a medical records affidavit is not covered by Health Insurance Portability and Accountability Act's (HIPAA) restriction on fees; HIPAA's privacy rule applies to the reproduction of medical records, not to the execution of a medical records affidavit for the purpose of establishing the authenticity of the records in court. NewSouth Neurospine, LLC v. Hamilton, 283 So. 3d 1092, 2019 Miss. LEXIS 400 (Miss. 2019).

§ 11-1-55. Authority to impose condition of additur or remittitur.

JUDICIAL DECISIONS

2. Particular cases—Additur.

Trial court did not abuse its discretion in denying a motor vehicle accident victim's post-trial motion for additur because the amount, reasonableness, and necessity of the victim's damages were contested and the jury determined the weight and worth of the testimony, the credibility of witnesses, and the reasonableness and necessity of the damages in awarding the victim's total damages. Furthermore, the verdict was not so inadequate as to shock the conscience and to indicate bias, passion, and prejudice on the part of the jury. Anderson v. Salaam, 283 So. 3d 302, 2019 Miss. App. LEXIS 469 (Miss. Ct. App. 2019).

§ 11-1-63. Product liability actions; conditions for liability; what constitutes a defective product.

JUDICIAL DECISIONS

ANALYSIS

11. Evidence.
17. Innocent seller.

11. Evidence.

In a products liability case filed after plaintiffs' son suffered injuries when he ingested magnets, the district court did not err by granting a motion in limine to exclude post-sale evidence at trial since the Mississippi Product Liability Act, Miss. Code Ann. § 11-1-63(a), required claimants to prove a defect based on what the manufacturer knew at the time the product was sold. Jordan v. Maxfield & Oberton Holdings, L.L.C., — F.3d —, 2020 U.S. App. LEXIS 31893 (5th Cir. Miss. Oct. 7, 2020).

Former owner of a meat grinder was entitled to summary judgment when an accident victim brought a failure-to-warn case because the victim failed to provide any evidence that the meat grinder was defective. The victim failed to present any evidence that the meat grinder was required to have a safety interlock feature, that the meat grinder violated any industry standard or regulatory requirement or that it failed to meet the manufacturer's specifications, and that anyone tampered with the meat grinder. Johnson v. T & T Farms, Inc., 283 So. 3d 1130, 2019 Miss. App. LEXIS 145 (Miss. Ct. App.), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 429 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 454 (Miss. 2019).

Summary judgment was properly granted to the manufacturer because the consumer did not meet his obligation under the Mississippi Products Liability Act to introduce evidence on the issue of causation that would have led the court to reasonably conclude that it was more

likely than not that the manufacturer's conduct caused the car to veer off the road and wreck. Logan v. Ford Motor Co., 293 So. 3d 840, 2019 Miss. App. LEXIS 454 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2020 Miss. LEXIS 109 (Miss. 2020), cert. denied, 291 So. 3d 1110, 2020 Miss. LEXIS 118 (Miss. 2020).

17. Innocent seller.

Innocent-seller provision, Miss. Code Ann. § 11-1-63(h), is an affirmative defense. Hinton v. Sportsman's Guide, Inc., 285 So. 3d 142, 2019 Miss. LEXIS 395 (Miss. 2019).

By adopting Miss. Code Ann. § 11-1-63(h), the Legislature expressly intended to immunize innocent sellers who are not actively negligent, but instead are mere conduits of a product. So § 11-1-63(h) apparently is a grant of statutory immunity. And, as recognized in other contexts, statutory immunity is an affirmative defense. Hinton v. Sportsman's Guide, Inc., 285 So. 3d 142, 2019 Miss. LEXIS 395 (Miss. 2019).

Seller of a fall arrest system was properly granted summary judgment on the parents' product liability claim where Miss. Code Ann. § 11-1-63(h) did not require that the system come from a reputable manufacturer, and the parents' evidence about the seller's knowledge of the alleged defect was too speculative. Hinton v. Sportsman's Guide, Inc., 285 So. 3d 142, 2019 Miss. LEXIS 395 (Miss. 2019).

§ 11-1-65. Punitive damages; limitations.

JUDICIAL DECISIONS

4. Availability.

Chancellor abused his discretion when he went straight to punitive damages without first awarding actual damages because despite finding the elements of a freeze out had been proved, the chancellor awarded no compensatory damages; on remand, the chancellor had to consider if any actual damages would be awarded based on a director's freeze out of a shareholder and, if so, if punitive damages were appropriate. Boatright v. A & H Techs., Inc., 296 So. 3d 687, 2020 Miss. LEXIS 243 (Miss. 2020).

§ 11-1-66. Immunity of premise owners from civil liability in certain circumstances.

JUDICIAL DECISIONS

3. Independent contractor or employee.

Development company and the company's owner were immune from liability for a worker's injuries because (1) the company and owner owned a construction site where the worker was injured at the time of injury, and (2) the worker's employer knew or should have known of the injury-causing condition. Lopez v. Bellamare Dev. LLC, — So. 3d —, 2019 Miss. App. LEXIS 390 (Miss. Ct. App. Aug. 13, 2019), cert. denied, 291 So. 3d 1110, 2020 Miss. LEXIS 188 (Miss. 2020).

Appellees were immune from civil liability for appellant's injuries because appellees were the owners, occupants, lessees, or managing agents of the construction site at the time of appellant's injury; and the independent contractor would have known that placing heavy tools in a plywood box, then placing that box unsecured on a telehandler, then using the telehandler to elevate the box three stories high, then instructing an employee to climb into that unsecured box was dangerous. Lopez v. Bellamare Dev. LLC, 293 So. 3d 271, 2019 Miss. App. LEXIS 619 (Miss. Ct. App. 2019).

CHAPTER 5.

PRACTICE AND PROCEDURE IN CHANCERY COURTS

RECEIVERS

§ 11-5-163. Receiver of estate of decedent, minor.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings brought under this section, see Miss. R. Civ. P. 81.

CHAPTER 7.

PRACTICE AND PROCEDURE IN CIRCUIT COURTS

IN GENERAL

§ 11-7-165. Award of damages in civil action against person who steals, embezzles, extorts or converts certain property of vulnerable adult; "position of trust" defined.

JUDICIAL DECISIONS

ANALYSIS

1. Summary judgment.
2. Undue influence

1. Summary judgment.

Chancery court properly granted a mother summary judgment in her conversion action against her son's fiancée because she produced a fully supported summary judgment motion that included a doctor's affidavit stating that the son was in the impaired range and that he did not have the cognitive ability, reasoning, or mental capacity to realize he was transferring a large sum of money to the fiancée or the consequences of his actions. Anderson v. Wiggins, — So. 3d —, 2019 Miss. App. LEXIS 209 (Miss. Ct. App. May 14, 2019), rev'd, — So. 3d —, 2020 Miss. LEXIS 39 (Miss. 2020).

2. Undue influence

Though a neuropsychologist's opinion provided a plethora of persuasive facts, it, at most, established that the decedent may have qualified as a vulnerable adult the day of certain transfers. Assuming the decedent qualified as a vulnerable adult did not prove that appellant wrongfully obtained the decedent's funds by means of undue influence. Anderson v. Wiggins, — So. 3d —, 2020 Miss. LEXIS 39 (Miss. Feb. 20, 2020).

CHAPTER 11.VENUE OF ACTIONS

IN GENERAL

§ 11-11-3. County in which to commence civil actions; dismissal of actions more properly heard in another forum; transfer of action to proper county; factors determining grant of motion to dismiss or transfer.

JUDICIAL DECISIONS

ANALYSIS

5. Venue where acts or substantial event occurred.
12. Change of venue in general.

5. Venue where acts or substantial event occurred.

Circuit court properly denied a lessee's motion to transfer venue because substantial acts occurred in the county where the lessor was located, the lessee was not being haled into a remote district where the parties' locations were in adjoining counties, the lessee was not haled into court by the lessor to establish venue, but rather voluntarily entered into the lessor's county to load and later return 688 of the 732 mats it rented, which were central to the dispute, and its affidavits confirmed that many of the lessor's allegations in the complaint were truthful. Taylor Constr. Co. v. Superior Mat Co., 298 So. 3d 956, 2020 Miss. LEXIS 93 (Miss. 2020).

Circuit court erred in changing venue in plaintiff's defamation case from the Circuit Court of the First Judicial District of Harrison County, Mississippi, to another circuit court because the record showed that the substantial event that caused plaintiff injury, the publication of the episode that caused her reputational harm, occurred in the First Judicial District of Harrison County, where plaintiff resided, where people were exposed to the material who might actually know plaintiff or interact with her in a way that could be affected by the information, and where plaintiff's reputation would suffer the most harm, where she lived and worked and where the people with whom she had personal or commercial relationships resided. Short v. Versiga, 283 So. 3d 182, 2019 Miss. LEXIS 355 (Miss. 2019).

12. Change of venue in general.

Trial judge abused her discretion in denying appellant's motion to transfer venue as appellees failed to produce any credible evidence to oppose the motion for change of venue because, although appellees' complaint alleged that the accident occurred in Hinds County, appellant countered with an affidavit that included a detailed explanation of where the accident had occurred in Madison County, which was consistent with the official police accident report; the accident report was attached both to the complaint and to appellant's affidavit stating the accident happened in Madison County; and appellant proffered, in addition to his own affidavit, pictures showing the accident location and an official accident report. Weir v. Mayze, 287 So. 3d 941, 2020 Miss. LEXIS 9 (Miss. 2020).

CHAPTER 15.

ARBITRATION AND AWARD

IN GENERAL

§ 11-15-23. Vacation of award; grounds.

JUDICIAL DECISIONS

2. Specific grounds for vacating award.

Plaintiffs failed to prove any of the grounds for vacation of the arbitrator's decision because they presented no evidence that the arbitration award fell under any of the four grounds that would allow the award to be vacated. Plaintiffs produced no proof that the arbitration award was procured by corruption, fraud, or undue means; there was no proof of partiality or corruption on the part of the arbitrator; there was no refusal to postpone the hearing upon sufficient cause, and no proof of misbehavior by which the parties' rights were prejudiced. There was no showing the arbitrator exceeded or executed his powers in a matter in which an award was imperfectly made. Coombs v. Jason Pilger Hyundai of Gautier, 285 So. 3d 730, 2019 Miss. App. LEXIS 594 (Miss. Ct. App. 2019).

CHAPTER 21.

PARTITION OF PROPERTY

Realty. 11-21-1

REALTY

Sec.
11-21-5. Parties to proceedings for partition.

§ 11-21-5. Parties to proceedings for partition.

Any of the parties in interest, whether infants or adults, may institute proceedings for the partition of lands or for a partition sale thereof, by judgment of court as herein provided, except that if the court determines that the property is heir property under the Uniform Partition of Heir Property Act, then such partition or sale must comply with the provisions of Title 91, Chapter 31, Mississippi Code of 1972. All persons in interest must be made parties except (a) in cases where a part of the freehold is owned by persons owning a life estate therein or a life tenancy therein subject to the rights of remaindermen or reversioners, then, in such event, it shall only be necessary that the person or persons owning or claiming a life estate or life tenancy

therein be made parties; and (b) in cases where the partition is for the surface of the land only, it shall not be necessary that persons owning divided or undivided interests in the minerals in the land be made parties unless such persons also have an interest in the surface of the land. An infant, or person of unsound mind, may sue by next friend as in other cases; but if the infant, or non compos mentis, have a guardian, the guardian must appear as next friend, unless good cause to the contrary be shown. Where an infant or non compos is made a party defendant, the guardian, if any, of such infant or non compos shall also be made a party, whether the infant or non compos be resident or nonresident and whether the guardian be a resident or a nonresident; and the said guardian may appear and answer the complaint. The summons to the defendants, including the guardian aforesaid, shall be made pursuant to the Mississippi Rules of Civil Procedure. The word "guardian," where used in this section, shall be held to apply also to all persons who, under the laws of any other state or country, stand in that relation whether known as curator, tutor, committee or conservator, or by whatever other name or title such person may be known.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 2 (1); 1857, ch. 36, art. 48; 1871, § 1814; 1880, §§ 2556, 2557; 1892, § 3098; 1906, § 3522; Hemingway's 1917, § 2834; 1930, § 2921; 1942, § 962; Laws, 1918, ch. 130; Laws, 1946, ch. 317, § 2; Laws, 1983, ch. 378, § 1; Laws, 1991, ch. 573, § 49, eff from and after July 1, 1991; Laws, 2020, ch. 433, § 14, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added the exception at the end of the first sentence.

PERSONALTY

§ 11-21-73. Partition by county court or justice court.

Editor's Notes — The following Editor's Note is set out in this supplement as it was mistakenly omitted from the 2019 Replacement Volume.

Laws, 1981, ch. 471, § 60, provides as follows:

"SECTION 60. Section 8 of this act shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Sections 4, 48 and 59 of this act shall take effect and be in force from and after passage. Sections 17 and 22 of this act shall take effect and be in forcefrom and after March 31, 1982. Sections 15, 16 and 58 of this act shall take effect and be in force from and after July 1, 1983. Sections 20, 23, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41, 42, 46, 47, 49, 50, 51, 52, 54, 55, 56 and 57 of this act shall take effect from and after January 1, 1984, or with respect to a given county, from and after such earlier date as such county elects to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 7 of this act. Sections 9, 10, 18, 19 and 43 of this act shall take effect and be in force from and after January 1, 1984." (As amended by Laws, 1982, ch. 423, § 28, eff from and after March 31, 1982)."

CHAPTER 25.
UNLAWFUL ENTRY AND DETAINER

ARTICLE 3.
PROCEEDINGS IN COUNTY COURT.

§ 11-25-111. Rent.

JUDICIAL DECISIONS

1. In general.

Father was not entitled to judgment against his children's mother and the children for a rent arrearage, when he purportedly revoked his "gift" to them of the house they lived in because, (1) he could not show any arrearage of rent, (2) he could not recover double rent, and (3) he was not a traditional landlord but a father seeking to obtain damages for his son's failure to vacate the father's property. Turnage v. Brooks, — So. 3d —, 2020 Miss. App. LEXIS 403 (Miss. Ct. App. July 28, 2020).